

REMARKS/ARGUMENTS

Favorable reconsideration of this Application, as presently amended and in light of the following discussion, is respectfully requested.

This Amendment is in response to the Office Action mailed on July 19, 2004. Claims 1-10 are pending in the Application, Claims 1, 2, 4, 5, and 7-10 stand rejected and independent Claims 3 and 6 have been allowed. The indication of allowable subject matter is noted with appreciation. Claims 1, 2, 5, and 7-10 are amended by the present Amendment.

Summarizing the outstanding Office Action, Claims 9 and 10 were rejected under 35 U.S.C. §112, first paragraph. Claims 1 and 4 were rejected under 35 U.S.C. §102(b) as being anticipated by Price (U.S. Patent No. 1,946,234, hereinafter "Price"). Claims 1, 4 and 10 were rejected under 35 U.S.C. §102(b) as being anticipated by Huenniger (Japanese Patent No. 10176874, hereinafter "Huenniger"). Claims 1, 2, 7 and 9 were rejected under 35 U.S.C. §102(b) as being anticipated by Chiang et al. (U.S. Patent No. 5,839,294, hereinafter "Chiang"). Claims 4 and 5 were rejected under 35 U.S.C. §102(b) as being anticipated by JP Negoro (Japanese Patent No. 54-22265, hereinafter "Negoro"). Claims 1 and 4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Price in view of Ogawa, Koike et al. (U.S. Patent No. 4,843,837, hereinafter "Ogawa") and vice versa. Claims 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Price and Negoro in view of Matsui et al (Japanese Patent No. 08254373, hereinafter "JP 08254373").

Applicants thank the Examiner for the courtesy of an interview extended to Applicants' representative on August 26, 2004. During the interview, Amendments to the claims as herein presented were proposed, and arguments as hereinafter developed were presented. During the personal interview the advantageous features of the inventions recited in Claims 1-10, as disclosed in Applicants' specification, were discussed with Examiner Chen-Wen Jiang. Although an agreement was not reached during the interview, Examiner

Jiang indicated on the interview summary (form PTO 413) that “[d]iscussions about: US Reference '234 is not valid since the claims specify at the given location. JP '874 is valid for claim 1 and not valid for claims 4 and 10. US '294 is a valid rejection. JP '265 is valid for claim 5 and not valid for claim 4. In regard to 103 rejections: US '234 in view of US '837 is not valid as described in '234 102 rejection above. Claim 8 is required to amend at the given location to overcome the rejection of JP '265 in view of JP '373.”

Based on the results of the personal interview, Claims 1 and 2 are amended to recite the subject matter of Claim 3, i.e., that “the heat exchanger tubes are arranged horizontally, and that the position of uppermost heat exchanger tubes in the upstream section is higher than the position of uppermost heat exchanger tubes in the downstream section.” In addition, Claims 7-10 have been rewritten as claims reciting refrigerators having evaporators according to Claims 3-6, respectively. Additionally, in view of the fact that Claims 9 and 10 have been rewritten as claims reciting a refrigerator, the rejection of Claims 9 and 10 under 35 U.S.C. § 112 is now moot. Its withdrawal is respectfully requested. Accordingly, Applicants respectfully submit that Claims 1-4 and 6-10 should be allowed and that the above-summarized anticipation and/or obviousness rejections of Claims 1-4 and 6-10 are now moot. Their withdrawal is respectfully requested.

As to Claim 5, it now recites an evaporator having a double-path flow passage wherein heat exchanger tubes in a downstream section of a first path of the double-path flow passage are spaced from each other by a first gap and the heat exchanger tubes in an upstream section of a second path of the double-path flow passage are spaced from each other by a second gap being larger than the first gap. The double-path flow passage now recited in Claim 5 finds non-limiting support in Applicants' specification at least on page 6, lines 4-13.

Applicants respectfully submit that Claim 5 as amended is not anticipated by Negoro. Negoro discloses a single-path heat exchanger wherein the spacing between the pipes at one

end is larger than the spacing between the same pipes at the other end. Such a structure does not anticipate a double-path heat exchanger wherein heat exchanger tubes in a downstream section of a first path of the double-path flow passage are spaced from each other by a first gap and the heat exchanger tubes in an upstream section of a second path of the double-path flow passage are spaced from each other by a second gap being larger than the first gap.

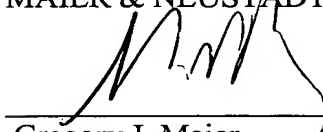
Based at least on the reasons just summarized, Applicants respectfully request that the anticipation rejection of Claim 5 based on Negoro be withdrawn and the claim passed to issuance.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1-10 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicants' undersigned representatives at the below listed telephone number.

Respectfully submitted,

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